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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3336 of 1998

with

SCA No.3349 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? yes.

3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?
No.

DAULATSINH RAMSINH GOHEL

Versus

G S R T CORPORATION

Appearance:

MR HK RATHOD for Petitioner

MRS VASAVDATTA BHATT for Respondent No. 1

SPECIAL CIVIL APPLICATION No 3649 of 1998

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

DAULATSINH RAMSINH GOHIL

Appearance:

MRS VASAVDATTA BHATT for Petitioner

Mr. H.K.Rathod for the respondent.

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 07/07/98

ORAL JUDGEMENT

Rule. Ms. Vasavadatta Bhatt waives service of notice of Rule for respondent in SCA No. 3336 of 1998 and Mr. H.K.Rathod waives service of notice of Rule for respondent in SCA No.3649 of 1998.

These two petitions are filed by the employee and the employer who were parties in Reference No. 64 of 1991 before the Labour Court, Surat. As these petitions are pertaining to one and the same reference, they are heard together and are being disposed of by this common judgment.

2. SCA No. 3336 of 1998 is filed by Daulatsinh Ramsinh Gohel and by way of this petition he is seeking to implement the award of the Labour Court, Surat in Reference No. 64 of 1991 dated 20.3.1997 and published on 2.7.97. SCA No.3649 of 1998 is filed by Gujarat State Road Transport Corporation (GSRTC) and by the said petition the GSRTC is seeking the quashing and setting aside the award passed by the Labour Court, Surat in Reference No. 64 of 1991 and to maintain the order of dismissal passed against the employee-Daulatsinh Ramsinh Gohel.

3. The petitioner in SCA No. 3336 of 1998 is working as a conductor in Surat depot. On 12.3.90 his bus was checked and it is the allegation of the employer that when the said bus was checked, it was found that though the conductor had received the amount of fare from 2 passengers totalling Rs. 15.10, he had not issued tickets to them and thereby he had attempted to misappropriate the said amount. A show cause notice was issued to him on 23.7.98. The show cause notice was replied by the workman denying all the allegations made against him. Thereafter the employer did not accept the said reply given by him and proceeded to hold a departmental inquiry against the petitioner. Said departmental inquiry had proceeded ex-parte and in the said departmental inquiry it was found that the workman had committed misconduct alleged against him and thereafter by order dated 9.8.1990, the workman was dismissed from service.

4. Being aggrieved by the said decision the workman raised an industrial dispute and on account of raising the said industrial dispute, Reference No. 64 of 1991 was made before the Labour Surat by the appropriate authorities.

5. In the said reference, the Labour Court had found that the departmental inquiry held against the workman was invalid and illegal. Consequently the Labour Court gave an opportunity to the employer to lead evidence before it in order to prove the charge levelled against the workman. In pursuance to the said opportunity, the employer had examined in all four witnesses. Considering the oral as well as documentary evidence adduced before the Labour Court, it came to the conclusion that the employer had failed to prove the charge levelled against the workman. Consequently the Labour Court directed the employer to reinstate the workman with full back back wages.

6. Being felt aggrieved by the said decision, the employer has come before this court by preferring SCA No.3649 of 1998. Ms. Bhatt learned advocate appearing for the petitioner in SCA No. 3649 of 1998 vehemently urged before me that the Labour Court was not at all justified in holding that the charge levelled against the oworkman was not proved. She further urged before me that the Labour Court ought to have upheld the charges levelled against the workman and she further pointed out that the Labour Court was not at all justified in ordering reinstatement of the workman with full back wages. As against the said submission of her Mr. Rathod

for the oworkman contended that the finding of fact recorded by the Labour Court is on the strength of appreciation of evidence led before it and no interference is called for. He also submitted that there are no circumstances to interfere with the order of the Labour Court by exercising powers under Articles 226 and 227 of the Constitution of India.

7. The conductor workman has taken from the beginning the stand that no incident as alleged by the employer had taken place. It is his claim from the very beginning that he had not received any amount from any passenger and he had not failed to issue tickets after receiving the amount of fare from the passengers. It is also his contention that as a matter of fact as curfew was enforced during those days, the bus was to reach at the destination before 7 p.m. and no incident as alleged by the employer has taken place. Now in view of the above specific stand taken by the workman it was necessary for the employer to prove the charge levelled against the respondent workman by leading satisfactory evidence before the Labour Court. Once the Labour Court has found that the departmental inquiry is illegal and invalid, no material collected during the said departmental inquiry could be used by the party as well as by this court for the purpose of considering the order passed by the Labour Court. The order of the Labour Court clearly shows that the departmental inquiry was illegal and invalid. The Labour Court had given opportunity to the employer to lead evidence to prove the charge levelled against the workman. Accordingly the employer had examined four witnesses. The Labour Court has recorded a finding that after the examination of those four witnesses by the employer, the employer has failed to prove the charge levelled against the said workman. Said finding is a finding of fact recorded on appreciation of evidence by the Labour Court. Learned advocate for the employer was not in a position to satisfy this court that said finding of fact recorded by the Labour Court is either perverse or grossly erroneous. When considering a petition under Articles 226 and 227 of the Constitution, this court can interfere with the finding recorded by the Labour Court only on finding that the finding recorded by the Labour Court is either perverse or grossly erroneous. As that is not the case in this case, I am unable to interfere with the finding of fact recorded by the Labour Court after appreciation of the oral evidence before the Labour Court. The Labour Court has also found that the defence version given by the workman was supported by the witness viz. the driver of the said bus that the bus was taken to the depot

before 7.00 p.m. Therefore, in the circumstances I am unable to interfere with the finding of fact recorded by the Labour Court that the employer had failed to prove the charge against the workman.

8. When the employer has failed to prove the charge against the workman before the Labour Court, as a natural consequence, the workman will have to be reinstated in service with full back wages by quashing and setting aside the order of dismissal. Ms. Bhatt learned advocate for the GSRTC urged before me that the employer is a public body and the conductor was involved in misappropriation of public funds and therefore, reinstatement of the workman with full back wages is not justified. She urged before me that I should at least interfere with the order of reinstatement of the workman with full back wages. But I am unable to accept said statement made by Ms. Bhatt because to deny the back wages to the workman would amount to awarding punishment to him. But a workman could be punished only in case if the charge levelled against him is proved. When the charge levelled against the workman is found to be not proved, then there could not be any punishment to him by denial of any back wages. Therefore, no interference is called for in the order passed by the Labour Court and consequently SCA No. 3649 of 1998 deserves to be rejected and SCA No., 3336 of 1998 which is filed for the implementation of the award deserves to be allowed. Thus SCA No. 3649 of 1998 is rejected and Rule is discharged. SCA No. 3336 of 1998 is allowed and Rule is made absolute. In the circumstances parties are directed to bear their respective costs.

The GSRTC is directed to implement the award within four weeks from the date of receipt of writ of this court.

(S.D.Pandit.J)